

**REMARKS**

Claims 1-17 are pending in the present application. In the above amendments, allowable Claims 2 and 3 have been rewritten in independent form, and new claims 5-1 have been added.

In the Office Action mailed December 5, 2003, the Examiner rejected claims 1 and 4 under 35 U.S.C. §102(a) as being anticipated by Naim, and objected to Claims 2 and 3 but indicated they would be allowable. It is believed that the amendments herein address the objections, which will not be further discussed.

Applicants respectfully respond to this Office Action by observing that Claim 1 specifies a packet delay time (Claim 4 recites a user's packet delay), which, as made clear in the specification at page 8, paragraph [1027], is the packet delay of a user's packet data at the base station, from when it is received by the BTS until it is transmitted by the BTS. Claims 1 and 4 have been rejected under 35 U.S.C. §102(a) as being anticipated by Naim, relying on the teachings in paragraph 13 of "dFr" as a teaching of a packet delay time and "a" as a teaching of a threshold and then alleging that Naim's "dFr" value is compared to "a" to determine a packet delay term. As taught by Naim, "dFr" is the elapsed time since the last visit by a scheduler, Naim, paragraph [0027]. Naim's "dFr" is thus independent of any concept relating to "packets", and accordingly is markedly different than the presently claimed delay, which has to do with how long it takes a BTS to transmit a user's packet, not with how long it takes a scheduler to visit a mobile station. An actual elapsed time since a mobile station was visited (as taught in Naim) is not the same thing and does not suggest a packet delay time as recited in Claim 1, or a user's packet delay as set forth in Claim 4. Accordingly, Claims 1 and 4 appear to be patentable.

It does not appear that Naim teaches or suggests using the throughput of new Claim 6, support for which can be found in paragraph [1036], to establish a priority.

Support for new dependent Claims 5, 7, and 9-15 can be found in paragraph [1031].

Support for new Claim 8 can be found in paragraph [1031].

It is believed that the substance of new independent Claims 16 and 17 has been addressed above.

## REQUEST FOR ALLOWANCE

In view of the foregoing, Applicants submit that all pending claims in the application are patentable. Accordingly, reconsideration and allowance of this application are earnestly solicited. Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number provided below.

Respectfully submitted,

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